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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056816
Party	Defendant VIA Technologies, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Google Inc., Petitioner, v. VIA Technologies, Inc., Registrant.	Cancellation No.: 92056816 Registration No.: 3,360,331 Mark: CHROME Issued: December 25, 2007 Registration No.: 3,951,287 Mark: CHROME Issued: April 26, 2011

REGISTRANT'S REPLY IN SUPPORT OF MOTION TO QUASH AS UNTIMELY PETITIONER'S NOTICE OF DISCOVERY DEPOSITION BY WRITTEN QUESTION OF MILLER CHEN

Registrant VIA Technologies, Inc. ("VIA") submits this Reply and the Declaration of Irene Y. Lee in further support of its motion to quash ("MTQ") as untimely the Notice of Discovery Deposition By Written Question Of Miller Chen ("Notice") served by Petitioner Google, Inc. ("Google").

I. INTRODUCTION

Google misses every mark in its Opposition, filling page after page with red herrings and non sequiturs that are irrelevant to the only issue at hand: Whether the Notice was timely given that Google waited until it was literally impossible to complete such deposition before the close of discovery to serve it? Despite Google's efforts at obfuscation, however, nothing in its Opposition refutes that the Notice was untimely from its inception because Google purposely waited until just one week before the discovery cutoff to spring it on VIA when it could and should have been served more than a year prior and when Google knew the deposition on written questions that it purported to schedule could never be completed before the close of discovery as required by the Board's rules and regulations. Instead, Google merely asserts – without citing a shred of support – that it is entitled to disregard all of the controlling authority on this issue such as *NFL v. DNH Management LLC*, 85 USPQ2d 1852, 1855 (TTAB 2008) and TBMP § 404.07(e), which provides that, "***all discovery depositions must be completed within the discovery period, including depositions on written questions***" and to twist the Board's suspension procedures relating to motions to compel ("MTC") and/or only to ***testimonial*** depositions on written questions to magically transform an untimely notice of ***discovery*** deposition into a timely one.

As explained below, however, the fundamental flaw in the logic underlying Google's gambit is that the Notice, which was indisputably for a discovery deposition and not a testimonial one, was untimely from the outset, and Miller Chen therefore never had any obligation to comply therewith, irrespective of whether the proceedings were suspended as a result of Google's subsequently filed motion to compel.

Google's other arguments are equally meritless. The argument that delayed service alone is not a basis for quashing a deposition notice is beside the point because this is not a motion about an otherwise insignificant delay in service. It is a motion about Google violating the Board's requirements by delaying in noticing a deposition until there was insufficient time to complete it during discovery. Likewise, the argument that 7 days notice is reasonable is a red herring because VIA's sole objection goes to whether a notice of a discovery deposition that Google was incapable of completing during the discovery period was ***timely*** under the black-letter rules mandating such completion, and not whether the notice given to VIA was ***reasonable*** under the circumstances. Lastly, Google's attempt to blame VIA for its undue delay in serving the Notice is controverted by the facts that Google not only knew ***for over a year*** that Miller Chen was a VIA employee living in Taiwan but had previously extracted VIA's consent to an unwarranted 120-day extension with a false promise that it would not depose Miller Chen. *See infra* § IV. Thus, the Board should quash the Notice.

II. GOOGLE CANNOT MANIPULATE BOARD SUSPENSIONS TO FLOUT THE RULE THAT *DISCOVERY* DEPOSITIONS BE TAKEN DURING DISCOVERY

Google does not – because it cannot – even attempt to deny that the Notice was untimely when served because it was served with insufficient time remaining in discovery to actually complete Miller Chen's deposition on written questions. Instead, its main argument as to why the Notice should not be quashed is that the Board allegedly suspended these proceedings "with discovery still open" either "retroactively to the filing date of Google's Motion to Compel in accordance with 37 C.F.R. § 2.120(e)(2) or to the date of the filing of the Notice of Deposition in accordance with standard Board practice (and prior practice in this very proceeding)." Opp. at 8. Google then claims that by insisting on Miller Chen's compliance with the untimely Notice, it is only behaving as a party normally would during a Board suspension. But not only is the Board's recent suspension order devoid of language to the effect that "discovery [is] still open" as Google claims, Dkt. 45 (6/19/15 Susp. Order), Google is sorely mistaken ***both*** as to the "standard Board practice" upon the filing of a notice of ***discovery*** deposition on written questions ***and*** as to the effects of a motion to compel and attendant suspension on a party's obligation to respond to untimely discovery requests.

A. The Board's Rules For *Testimony* Depositions On Written Questions Are Inapplicable.

In arguing that the Board has a practice of suspending proceedings upon the filing of a notice of ***discovery*** deposition on written questions, Google improperly conflates the rules for ***discovery*** depositions by written questions with those for ***testimony*** depositions by written questions. It is well-settled that there are "substantial differences" between these two types of depositions "stemming from the differences between the discovery and trial stages of a proceeding." TBMP § 404.09; *cf. Smith Int'l, Inc. v. Olin Corp*., 201 USPQ 250 (TTAB 1978) ("[D]iscovery depositions and testimony depositions . . . are, in fact, quite distinguishable."). As is especially pertinent here, the Board's rules and regulations about suspending proceedings upon receipt of a notice of deposition on written questions differ depending on whether the notice is for a discovery or testimony deposition. Specifically, as demonstrated by the following chart, whereas the Board's rules and regulations as to ***testimony*** depositions on written questions provide that its receipt of a notice of such a deposition "will" or "shall" ***necessarily*** result in a suspension of proceedings, this mandatory language is conspicuously absent from the ***corresponding*** TBMP and CFR provisions governing suspensions relating to ***discovery*** depositions on written questions. Instead, the latter merely contain permissive language that the Board has discretion to suspend proceedings if warranted which, as explained in § IV *infra*, is not the case here.

Testimony Deposition On Written Questions	Discovery Deposition On Written Questions
37 CFR § 2.124(d)(2): "Upon receipt of written notice that one or more ***testimonial*** depositions are to be taken upon written questions, the Trademark Trial and Appeal Board ***shall*** suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions." (emphasis added)	No parallel language in 37 CFR § 2.124(d)(2) or elsewhere in the CFRs.
TBMP § 510.03(a) Suspension: "***Testimonial*** **depositions on written questions**. Upon receipt of written notice that one or more ***testimonial*** depositions are to be taken upon written questions pursuant to 37 CFR § 2.124, the Board ***will*** suspend or reschedule other deadlines or time periods in the case to allow for the orderly completion of the depositions upon written questions." (emphasis added)	TBMP § 510.03(a) Suspension: "***Discovery*** **depositions on written questions**. Upon receipt of written notice that one or more ***discovery*** depositions are to be taken upon written questions pursuant to 37 CFR § 2.124(b)(2), the Board ***may*** suspend or reschedule other deadlines or time periods in the case to allow for the orderly completion of the depositions upon written questions. (emphasis added)
TBMP § 703.02(c) [Testimony] Depositions on Written Questions: When Taken: "On receipt of written notice that one or more ***testimony*** depositions are to be taken on written questions, the Board ***will*** suspend or reschedule other proceedings in the case to allow for the orderly completion of the depositions on written questions." (emphasis added); *see also* TBMP § 703.02(g) (same).	TBMP § 404.07(b) [Discovery] Depositions on Written Questions: When Taken: "The question whether to suspend discovery activities unrelated to a proposed ***discovery*** deposition on written questions, or to allow other discovery activities to proceed, ***is a matter left to the Board's exercise of its discretion*** to schedule matters before it." (emphasis added)

The above-noted differences in the suspension rules are attributable to the differing timeframes typically allocated for testimony versus discovery. The Board is required to suspend proceedings for a notice of ***testimony*** deposition on written questions because, "[i]n the aggregate, the time period [under 37 CFR § 2.124] for serving direct questions, cross questions [up to 20 days], redirect questions [up to 10 days] and recross questions [*i.e.*, up to 10 days for a total of up to 40 days even absent substitute questions and without completing the actual deposition] exceeds the 30-day testimony period assigned to the party taking the testimony." Jeffrey A. Handelman, 2 GUIDE TO TTAB PRACTICE § 17.14[I] (2015); *see also* Louise E. Fruge, TIPS FROM THE TTAB: Depo. Upon Written Questions, 70 TMR 253 (1980) (suspensions for testimony depositions on written questions are appropriate as "one's testimony period will have almost expired before service of all the questions can be accomplished"). But no such concern is present with ***discovery*** depositions on written questions because the Board allocates at least ***180 days*** for discovery. 37 CFR § 2.120(a)(2). Indeed, with all of the extensions of the same here, ***701 days***[1] actually lapsed before the discovery ultimately closed on June 2, 2015. Moreover, the Board's rules not only explicitly provide that "***all discovery depositions must be completed within the discovery period, including depositions on written questions***." TBMP § 404.07(e) (emphasis added); *see also* 37 CFR § 2.120(a)(3); TBMP §§ 403.01, 403.02, 404.01, 404.05, 404.07(b), 404.09, they warn "that a party, which desires to take a discovery deposition on written questions, ***initiate the procedure early in its discovery period***," TBMP § 404.07(b). Thus, Google's reliance on mandatory suspension rules that, on their face, apply only to ***testimony*** depositions in opposing this motion concerning a ***discovery*** deposition is misplaced.

Google's citation to *Health-Tex Inc. v. Okabashi*, 18 USPQ 1409, 1410-11 (TTAB 1990) fails for the same reasons. *Okabashi* neither involved a motion to quash nor a notice for a ***discovery*** deposition on written questions that could not have been timely completed as misleadingly insinuated by Google. Rather, it involved a notice of a ***testimony*** deposition on written questions served by an opposer after its scheduled testimony period had ended. The opposer had moved to extend its testimony period prior to serving the notice at issue and the applicant had neither contested this motion nor objected to the opposer noticing and taking other testimony depositions during the requested extension period despite that its original deadline for taking testimony had run. However, the applicant inexplicably objected that this one notice was untimely because the Board had yet to rule on the opposer's extension request and moved for a protective order as to the same. The Board therefore

[1] Even with the 2 suspensions that occurred during this time, outstanding discovery was not tolled during the first, and there were still ***531*** wholly unrestricted days of discovery.

properly granted the opposer's extension request as uncontested and suspended the proceedings retroactive to the filing date of the notice of testimony deposition on written questions in accordance with 37 CFR § 2.124(d)(2) which, as set forth above, mandates suspension upon receipt of a notice of "***testimonial***" deposition on written questions only. After taking these steps to confirm that the notice in question was timely served and that the resulting mandatory suspension ensured the opposer sufficient time to complete the deposition, the Board concluded that the applicant's objection was not well taken. *Id.* Because *Okabashi* concerned only the timeliness of a notice of ***testimony*** deposition on written questions, which is subject to different suspension rules than a notice of ***discovery*** deposition on written questions, it has no bearing on the Board's decision here.

B. Google Cannot Render An Untimely Notice Of Discovery Deposition Timely By Virtue of Filing A Subsequent Motion To Compel.

Google feigns as though the parties' dispute over its reliance on its motion to compel is about whether it was reasonable for Google to assume that the Board would ultimately suspend these proceedings as a result thereof, Opp. at 8-9. But the truth is VIA never disputed this. What VIA disputed – and Google's Opposition fails to address, let alone refute – is Google's unsupported and unsupportable assumption that such a suspension can somehow be abused to create a discovery obligation where none exists. Framed in Google's own terms, by insisting on compliance with a notice of discovery deposition by written questions that was untimely and thus improper when served simply because it subsequently filed a motion to compel, Google was not behaving as though these proceedings would be suspended in accordance with the Board's standard procedures, which only require witnesses to appear for "***duly noticed***" depositions during the pendency of a motion to compel, *see* TBMP § 510.03(a) (a party is only obligated to appear for a "discovery deposition which had been ***duly*** noticed prior to the filing of the motion to compel" during the pendency of a motion to compel; Dkt. 19 (6/27/14 Susp. Order re MTC); Dkt. 45 (6/19/15 Susp. Order re MTC), and not for an ***unduly*** – *i.e.*, untimely – noticed discovery deposition such as the one at issue, *see, e.g.*, TBMP § 403.01 ("A party has no obligation to respond to an untimely request for discovery"); *Rhone-Poulenc v. Gulf Oil*, 198 USPQ 372, 373 (TTAB 1978) (quashing notice of deposition to be taken after discovery period as "untimely"). Rather, Google was behaving as though it should be allowed to disregard the Board's rules and regulations and to proceed even with a deposition that was ***not*** duly noticed. Taken to its logical conclusion, Google's reading of the Board's rules leads to the result that parties who follow an untimely deposition notice with a motion to compel can unilaterally exempt themselves

from the requirement that discovery depositions be completed during discovery leaving only those who do not so move to face the consequences of their non-compliance.

Not only is Google's reading absurd, unfair, and prone to abuse, it is squarely foreclosed by controlling authority. In *NFL*, the Board considered a motion to quash in the context of this exact same fact pattern: A notice of discovery deposition served during, but for a deposition that would take place after, the discovery period, followed by a motion to compel that resulted in a suspension of proceedings. 85 USPQ2d at 1853-55. Even though the date noticed for the discovery deposition in *NFL* fell squarely during the suspension period – which the Board specifically noted would extend beyond its determination of the motion to quash until it could decide the motion to compel in due course – the Board quashed the deposition notice as untimely in view of its rules mandating that discovery depositions be both noticed and completed within the discovery period. *Id.* It did ***not*** hold, as Google now claims, that the subsequent motion to compel and resulting suspension cured the untimeliness issue with the deposition notice and obligated the responding party to appear for a deposition that it would not otherwise have had to attend. Thus, the Board made clear in *NFL* that all parties are equally bound to follow its rule that discovery depositions must be completed during discovery regardless of whether they file a subsequent motion to compel.

None of the cases cited by Google undercut *NFL* or support its radical position. Opp. at 8-10. In fact, none of them have anything to do with ***untimely discovery requests*** such as the one at issue, let alone the effect of a motion to compel and resulting suspension on a party's obligations to respond to the same. Many do not concern discovery at all or, if they do, they concern only how the broader suspension resulting from the filing of potentially dispositive motions described in TBMP § 510.03(a), which does not have the same carve-outs for discovery as a suspension resulting from a motion to compel, may enable parties to ***defer*** responding to ***timely*** discovery requests. *Leeds Techs. v. Topaz Communs.*, 65 USPQ2d 1303, 1305-06 (TTAB 2002) (non-precedential) (party had good cause to presume proceedings would be suspended pending dispositive motion and to defer responding to ***timely-served*** discovery in anticipation thereof); *Build-A-Bear v. Silver Dollar City*, 2003 TTAB LEXIS 567, *4 (TTAB 2003) (non-precedential) (same); *H.D. Hudson Mfg. v. Gardens Alive*, 1999 TTAB LEXIS 340, *1 n.2 (TTAB 1999) (non-precedential) (because filing of summary judgment motion resulted in suspension of proceedings, opponent's cross-summary judgment motion filed after its testimony period would otherwise have commenced absent suspension was timely); *Super Bakery, Inc. v. Benedict*, 96 USPQ2d 1134, 1135-36 (TTAB 2010) (filing of summary judgment motion and resulting suspension did not

provide party with good cause for failing to comply with deadlines set out in Board's sanctions order for it to respond to ***timely-served*** discovery requests); *Phillies v. Phila. Consol. Holding Corp.*, 107 USPQ2d 2149, 2150, 2154 & n.6 (TTAB 2013) (while warning that parties should not presume that discovery will automatically be reset after a motion is decided, the Board, in "the exercise of its discretion," allowed parties "a short period [of 22 days] to complete discovery" after ruling on protective order motion seeking relief from ***timely-served*** discovery requests because it was filed prior to the close of discovery even though suspension came after). Indeed, *Super Bakery* undermines Google's position while reinforcing VIA's because it suggests that the Board does not take kindly to parties abusing its suspension procedures to evade deadlines as Google has done here. 96 USPQ2d at 1136. Because no amount of maneuvering by Google can change that the Notice was untimely when served, the Board should grant this motion to quash the same.

III. VIA'S MOTION NEITHER CONCERNS MERE DELAY NOR THE REASONABLENESS OF THE NOTICE GIVEN BY GOOGLE

Google's arguments that "delay in noticing a deposition is not a valid basis for moving to quash" and that "it is not unreasonable for a party to notice a discovery deposition near the end of the discovery period, as long as the other party has enough notice in advance of the deposition date to prepare for the deposition" are at the height of irrelevance. Opp. at 10-11.

Google did not merely delay in serving the discovery deposition notice in question – it delayed until it was too late to complete the noticed deposition within the discovery period as the Board requires. Indeed, as set forth above, the Board's rules and regulations recite this requirement ***at least 8 separate times***. *See* § IIA, *supra*. Having ignored these unequivocal and repeated admonishments and waited until it was impossible to complete Miller Chen's discovery deposition on written questions before the close of discovery to serve the Notice, Google must now face the consequences of its own lack of diligence and deliberate choices.[2]

Similarly, to claim that 7 days is reasonable notice for a deposition is no response to a motion to quash based on ***an entirely separate and distinct ground*** – *i.e.*, timeliness. A timeliness objection to a deposition notice goes to the black-and-white issue of whether it was actually served and the deposition actually completed within the allotted time, while a reasonableness of notice objection requires a fact-intensive inquiry into

[2] Nor does TBMP § 412.06(a) have anything to do with ***delays in noticing*** depositions as Google misrepresents. TBMP § 412.06(a) states that "[a]n assertion . . . that the ***examination*** would cause undue . . . delay is generally an insufficient basis for obtaining a protective order." (emphasis added). It also states, consistent with VIA's position, that "[a] party may file a motion for a protective order (or alternatively, a motion to quash) . . . ***if the notice would result in a deposition being taken outside the discovery period***." *Id.*

whether, under the individual circumstances of the particular case, the noticing party provided the responding party with sufficient information and time to prepare for the deposition in question. *Sunrider Corp. v. Raats*, 83 USPQ2d 1649 (TTAB 2007). Again, VIA moved to quash the Notice as ***untimely*** because by the time it was served, there was not enough time remaining in discovery to complete a discovery deposition on written questions. It never moved on the ground that 7 days was unreasonable notice. Dkt. 43 (MTQ).

In any event, the *Esurance Inc. v. Stamps.com* case cited by Google is distinguishable. For one, it did not involve a foreign witness and the responding party there had ***6 actual days of notice***, whereas VIA had ***less than 5*** due to Google's calculated decisions to both serve the Notice by First Class Mail on May 26, 2015 – which service copy was not received by VIA's counsel until June 1, 2015 – and delay emailing a courtesy copy until mid-day on May 29, 2015 to ensure that VIA would not move to quash the Notice until ***after*** Google had filed its strategically-timed motion to compel on May 28, 2015. 2001 TTAB LEXIS 777 (TTAB 2001) (non-precedential); 6/11/15 Rhee Decl. Re MTQ (Dkt. 43) ¶¶ 12-13 & Ex. 10 at 3 & Ex. 11.

Thus, the Board should reject Google's arguments based on "mere" delay and unreasonable notice for the meritless red herrings that they are.

IV. GOOGLE'S UNDUE DELAY IN SERVING THE NOTICE IS INEXCUSABLE

Notwithstanding all of Google's contortions to deflect responsibility for its own lack of diligence in waiting until the last minute to serve the Notice, ***the fact still remains that the Notice is untimely because it was served after it was too late for Miller Chen's deposition to be completed before the close of discovery***. Moreover, Google's efforts to blame its delay on VIA are belied by the record and common sense as follows:

- Google knew Miller Chen worked for VIA and could be served through VIA's counsel by ***March 26, 2014*** (***14 months*** pre-Notice) but waited ***another 6 weeks*** before so much as asking whether VIA would produce him for a deposition. 6/11/15 Rhee Decl. Re MTQ (Dkt. 43), Ex. 2 at 2 & Ex. 3 at 3.
- Google knew Miller Chen was in Taiwan by ***May 16, 2014*** (***over 12 months*** pre-Notice) but chose not to notice his deposition at that time despite that VIA followed up 4 times about such a deposition between May 16 and June 11, 2014. *Id.* at Ex. 3 at 1; Ex. 4 at 1; Ex 5. Although Google now pretends VIA's counsel misled it into believing that it could orally depose Miller Chen, VIA's counsel denies ever having made statements to this effect. Lee Decl. ¶¶ 2-8. Also, the very fact that Google served a notice of deposition on written questions instead of a notice of oral deposition gives the lie to any claim that it was ever laboring under such a misimpression. Further, even assuming that, in spite of its own conduct to the contrary, Google

genuinely believed it could orally depose Miller Chen, this ***still*** neither explains nor excuses Google waiting for over a year to try to move forward with his deposition.

- Google asserts that VIA's untimeliness argument is absurd because even if it had noticed Miller Chen's deposition on written questions on March 26, or May 16, 2014 it still would not have been completed before the discovery cutoffs then in place. But it is Google's assertion that fails. First, it does nothing to change the facts actually before the Board, which are that Google had all the information it needed to prepare the Notice for more than a year before discovery finally closed on June 2, 2015. Second, there is no need to speculate whether Google would have had sufficient time to complete a deposition on written questions had it diligently pursued one in 2014 because the record shows that it did. Specifically, the record shows that the parties met and conferred in July 2014 and VIA agreed to extend discovery by 120 days for the express purpose of enabling Google to conduct certain depositions, including ***not one but two*** depositions on written question of Inky Chen and Richard Brown even despite that Google had not previously noticed either of these depositions. While VIA did not believe Google needed such a lengthy extension to complete the 5 depositions it sought of Ms. Chen, Mr. Brown, Dr. Ken Weng, Amy Wu, and Pat Meier, Google insisted the two depositions on written questions had to be taken back-to-back and not simultaneously with any other depositions. 6/11/15 Rhee Decl. Re MTQ (Dkt. 43), Ex. 7 at 14-25. Google not only failed to raise Miller Chen's deposition at this time so that it could be factored it into the extension Google was requesting, Google made the conscious choice to forgo it altogether, promising to "refrain from propounding any new discovery requests unless such requests stem from information acquired in the above-referenced depositions or constitute follow-up to previously served discovery requests" to get VIA's consent. *Id.* at 19. Third, even without this 120-day extension, had Google taken steps to depose Miller Chen promptly after learning that he was a VIA employee on March 26, 2014 instead of ***wasting 6 weeks*** before even asking if VIA would produce him for a deposition, it would have had ***more than 60 days*** before the then-existing discovery cutoff of May 27, 2014[3] to complete his deposition on written questions. Similarly, had Google acted promptly after May 16, 2014, it would have had ***more than 40 days*** before the then-existing cutoff of June

[3] Notwithstanding Google's disingenuous assertion that the discovery cutoff was April 27, 2014, VIA agreed in ***the very same letter*** to Google about Miller Chen's employment status that it would stipulate to an extension to May 27, 2014 which extension request was then filed and approved by the Board on March 28, 2014. *See* 6/11/15 Rhee Decl. Re MTQ (Dkt. 43), Ex. 2; Dkt. 13-14 (3/28/14 Mot. for Ext. & Order granting same).

26, 2014. As Google itself represented to the Board, 40-60 days is enough to complete a deposition on written questions. Dkt. 21 (7/28/14 Jt. Mot.); *see also* 37 CFR § 2.124(d)(1).

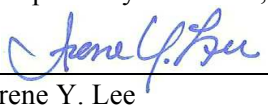
- Google says that Miller Chen "took on a much greater significance" as a witness for its potential fraud claim when VIA moved to amend the registrations at issue on March 31, 2015, suggesting that this was the first time it had reason to suspect that VIA had not used the CHROME mark on every service identified in the Statement of Use he had signed. But as detailed in VIA's opposition to Google's April 21, 2015 motion to amend to add a fraud claim, Dkt. 36-38, Google accused VIA of fraudulently obtaining its services registration ***27.5 months before VIA's motion to amend*** and ***more than 28 months before Google sought to add its fraud claim***. 5/11/15 Lee Decl. (Dkt. 37), Ex. 1 (12/18/12: "Via's U.S. registrations are vulnerable to cancellation based on the overbroad list of goods ***and services*** for which it, ***apparently falsely***, claimed to have used the mark and also appear to be independently vulnerable to cancellation for non use.") (emphasis added). VIA also admitted not using the CHROME mark on all the services identified in its registration and Miller Chen's Statement of Use in interrogatory responses served ***10 months before VIA's motion to amend*** and ***11 months before Google's***. *Id*. at Ex. 3. Further, Google's hollow excuse fails to justify its waiting yet another 2 months after VIA's motion to amend to serve the Notice. *Valvoline v. Vortech Eng'g*, 1996 TTAB LEXIS 166, *7 (TTAB 1996) (non-precedential) (couple month delay in pursuing discovery not justifiable).

V. CONCLUSION: THE BOARD MUST GRANT VIA'S MOTION TO QUASH

For all of the reasons stated above and in VIA's opening brief, the Board must quash the Notice as untimely on the ground that Google delayed until it was indisputably too late to complete Miller Chen's discovery deposition on written questions during discovery to serve it.

Dated: July 21, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2015, one (1) true and correct copy of the foregoing document was served on Petitioner by First Class Mail to Petitioner's counsel at the address below:

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Google Inc., Petitioner, v. VIA Technologies, Inc., Registrant.	Cancellation No.: 92056816 Registration No.: 3,360,331 Mark: CHROME Issued: December 25, 2007 Registration No.: 3,951,287 Mark: CHROME Issued: April 26, 2011

DECLARATION OF IRENE Y. LEE IN SUPPORT OF REGISTRANT'S REPLY IN SUPPORT OF MOTION TO QUASH AS UNTIMELY PETITIONER'S NOTICE OF DISCOVERY DEPOSITION BY WRITTEN QUESTION OF MILLER CHEN

I, Irene Y. Lee, hereby declare as follows:

1. I am a partner at the law firm Russ, August & Kabat ("RAK"), counsel of record for Registrant VIA Technologies, Inc. ("VIA") in these cancellation proceedings. Unless otherwise stated herein, I make this statement in support of VIA's reply in support of its motion to quash as untimely the Notice of Discovery Deposition By Written Question Of Miller Chen ("Notice") served by Petitioner Google, Inc. ("Google") based on my personal knowledge.

2. Google asserts at pages 2 and 4 of its Opposition to the above-described motion that VIA's counsel misled it to believe that VIA would make Miller Chen available for an oral deposition in Taiwan instead of having to proceed through a deposition on written questions. As support for this assertion, Google cites to Paragraphs 19-20 of the declaration of Rebecca Givner-Forbes that was filed concurrent with its Opposition.

3. Ms. Givner-Forbes alleges in Paragraph 19 of her declaration that I made statements to another attorney for Google, Katie Krajeck, during a May 16, 2014 telephone call, implying that Google had an option of taking an oral deposition of Miller Chen in Taiwan.

4. Ms. Givner-Forbes did not participate in the May 16, 2014 telephone call nor has firsthand knowledge of the conversation between Ms. Krajeck and me.

5. In any event, I hereby categorically deny ever having given Ms. Krajeck or any of Google's counsel of record any indication whatsoever that VIA would produce Miller Chen for an oral deposition at any point in these proceedings whether during this May 16, 2014 telephone call or otherwise.

6. In Paragraph 20 of her declaration, Ms. Givner-Forbes alleges that, "on May 17 and May 23, 2014, Ms. Lee asked Ms. Krajeck how Google planned to proceed with Mr. Chen's deposition, again implying that how to depose Mr. Chen was *Google's choice*."

7. Although Ms. Givner-Forbes does not explain the nature of these communications, I believe she is referring here to two emails that I sent to Ms. Krajeck on May 17 and May 23, 2014, which were copied to all of Google's other counsel of record but not to Ms. Givner-Forbes herself. In fact, VIA was not made aware of Ms. Givner-Forbes' representation of Google until 2015.

8. These same emails dated May 17 and May 23, 2014 are appended as Exhibits 3 and 4 to the June 11, 2015 declaration submitted by my colleague, Jean Y. Rhee, in support of the instant motion to quash. *See* Dkt. 43. I respectfully submit that these emails speak for themselves and do not in any way support the implications that Ms. Givner-Forbes fabricates in her declaration.

Executed on July 21, 2015 at Los Angeles, California.

Irene Y. Lee